

Kelso City Council Agenda

Regular Meeting, 7:00 pm
February 5, 2013
City Hall, Council Chambers
203 S. Pacific
Kelso, WA 98626



Special accommodations for the handicapped and hearing impaired are available by special arrangement through the City Clerk's Office at 360-423-0900

Invocation:

Call to Order:

Roll Call to Council Members:

Approve Minutes:

January 15, 2013-Regular Meeting
January 22, 2013-Special Meeting/Council Workshop

Public Hearing

CDBG Planning Grant – Closeout N. Kelso Sewer Groundwater Study

Presentation:

1. Kelso Police Department Annual Report, Chief Andrew Hamilton

Consent Items:

1. Parks Board Reappointment
 - a. Scott Derosier
 - b. Dan Jones
 - c. Pamela Jo Enbusk
2. Contract Award
 - a. Traffic Signal Maintenance
3. Liquor License Renewals
 - a. Kelso AM/PM, 1700 Allen Street E
 - b. B.P.O. Elks Kelso Lodge, 900 Ash Street

Citizen Business:

Council Business:

1. Visitors Center Update - Discussion

Action/Motion Items:

1. Resolution
 - a. Adopting Council Rules
2. Resolution

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- a. Surplus – City Office Equipment
- 3. Ordinance, 1st Reading
 - a. Amending KMC 2.04 City Council
- 4. Ordinance, 2nd Reading
 - a. LS Network Franchise Agreement

Other Items:

- City Manager Report
- Staff/Dept Head Reports
- Council Reports
- Other Business
- Executive Session

Pastor Mike Speegle, Kelso/Longview Seventh-Day Adventist Church, gave the invocation. Mayor David Futcher led the flag salute. The Regular Meeting of the Kelso City Council was called to order by Mayor David Futcher. Councilmembers in attendance were: Futcher, Lefebvre, Archer, Myers, McDaniel, Roberson, and Schimmel.

Minutes: Upon motion by Councilmember Roberson, seconded by Councilmember Lefebvre, 'Approve the Minutes of the 1/02/13 Regular Meeting,' motion carried all voting yes.

Real Estate Update: Designated Real Estate Broker for the City of Kelso Butch Henry gave a power point presentation that provided an update of the City's marketable properties. He discussed the past properties, the current properties, and the spaces that the city has listed. Mr. Henry thanked the Council for once again selecting him from the recent RFP and greatly appreciates retaining our business. Councilmember Roberson asked if there had been any recent interest in the old finance building. Mr. Henry stated that he had received two calls since the first of the year.

CONSENT AGENDA:

1. **Liquor License Renewals** a) Plaza Jalisco, 400 W. Main b) Quick Stop Market, 807 S. Pacific Ave.
2. **Closeout Mill Street Test Well – Holt Services Inc.**
3. **Auditing of Accounts:** \$1,788,020.42

Upon motion by Councilmember Roberson, seconded by Councilmember Myers, 'Approve the Consent Agenda and the Auditing of Accounts in the amount of \$1,788,020.42,' motion carried all voting yes.

CITIZEN BUSINESS:

Larry Alexander, 1517 N. 3rd Ave, spoke regarding the Visitor Center closure. He inquired about plans to reopen. Mayor Futcher invited him to attend the meeting scheduled for January 22, 2013, at 6:00 p.m. here at City Hall where further actions concerning the Visitor Center will be discussed.

David McClure, 305 SW 4th Ave, spoke regarding two local residences. He stated that the residence at 209 Catlin and SW 4th is slowly turning into a junkyard. The other residence at 207 SW 4th has a dog that chases vehicles and other dogs. He recently contacted the Humane Society. A field staff member addressed him unprofessionally. He requested to speak with the manager and was informed that that was not going to happen. He would like to see the Humane Society operate in a more professional manner when speaking with the public and in their day to day operations.

Anthony Currera, 803 S. 6th Ave, spoke regarding the Humane Society and having similar problems. He stated he was attacked by dogs twice and the staff did not come out to take his report. He stated he was also treated unprofessionally by staff. He requested an appointment to speak with Rick Johnson and was informed that that was not possible. City Manager Steve Taylor stated he would contact the Humane Society and report back to Council.

COUNCIL BUSINESS:**2013 City Council Standing Committee/Board Assignments**

With the consensus of the Councilmembers, Mayor Futcher made the following Council Boards & Commissions Assignments:

CLEDD	Rick Roberson and David Sypher
Airport Authority	David Futcher, Gary Archer Alternate
CAP Board	Dan Myers and Todd McDaniel
CEDC Executive Board	Steve Taylor
CEDC	Rick Roberson
City Audit	Dan Myers and Gary Schimmel Todd McDaniel, Alternate
Cowlitz Transit Authority Board	Todd McDaniel and Rick Roberson Gary Schimmel Alternate
CWCOG	Dan Myers and Rick Roberson
Disability Board	David Futcher
911 E-Board	Steve Taylor
Cowlitz County 911 Council	Gary Schimmel, Gary Archer Alternate
KDRA	Rick Roberson and Kim Lefebvre
Fire Pension Board	David Futcher and Brian Butterfield
Library Board	Gary Schimmel

Lodging Tax Advisory	Todd McDaniel
Mayor's Association	David Futcher
Park Board Liaison	Gary Archer and Gary Schimmel
Public Health	Kim Lefebvre
Sewer Operating Board (TRRWA)	David Sypher, Steve Taylor Alternate
Solid Waste Technical	David Sypher and Dan Myers
Metropolitan Planning Organization	David Sypher and Rick Roberson
RTPO	David Sypher and Rick Roberson
Big Idea	Kim Lefebvre, Gary Archer Alternate
Cowlitz County Government Summit	Dan Myers and Gary Archer Rick Roberson Alternate
Pathways 2020	Steve Taylor

Upon motion by Councilmember Schimmel, seconded by Councilmember Lefebvre, 'approve Committee and Board Assignments for 2013,' motion carried, all voting yes.

MOTION ITEMS:

Ordinance No. 13-3790 Amending KMC 8.24: The Deputy Clerk read the proposed ordinance by title only. Upon motion by Councilmember McDaniel, seconded by Councilmember Myers, 'Adopt Ordinance 13-3790, 'AN ORDINANCE OF THE CITY OF KELSO AMENDING KMC 8.24 TO AMEND PROCEDURES FOR CLEANUP OF ABANDONED PROPERTY AND TO REMOVE PROCEDURES FOR BOARD OF APPEALS HEARINGS,' motion carried, all voting yes.

Resolution No. (1st Reading) Adopting Council Rules: The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember Schimmel, seconded by Councilmember Myers, 'Pass on 1st reading, 'A RESOLUTION ADOPTING COUNCIL RULES.' Mr. Taylor addressed the order of business section in Council Rules. Upon motion by Councilmember McDaniel, seconded by Councilmember Roberson, 'Amend motion to Council Rules by starting Council Meetings at 6:00 p.m. instead of 7:00 p.m.' Discussion followed. Councilmembers McDaniel, Futcher, Lefebvre, Roberson, Schimmel and Myers voted yes. Councilmember Archer voted no. Motion carried 6 to 1. Mayor Futcher addressed the public comment section in the

Council Rules. Upon motion by Mayor Fletcher, seconded by Councilmember McDaniel, **'Amend motion to Council Rules to change public comment from five minutes to three minutes,' motion carried, all voting yes.** Councilmember Roberson stated that he would like to add the "No Surprise Rules" to the Council Rules. Councilmember Myers read the "No Surprise Rules". Upon motion by Councilmember Roberson, seconded by Councilmember Schimmel, **'Amend motion to the Council Rules to include the "No Surprise Rules" terminology.'** Discussion followed. **Motion carried, all voting yes.** Mr. Taylor suggested that the Council Rules be updated to include all the approved changes and bring the Resolution back to the next Council Meeting for an overall approval. Upon motion by Councilmember Lefebvre, seconded by Councilmember Schimmel, **'Table motion to Adopt Resolution to Council Rules,' motion tabled, all voting yes.**

MANAGER'S REPORT:

Steve Taylor: 1) Reminded the Council that we are operating under the new Council Rules in terms of the Department Head Reports which are now provided in written format. Staff will be happy to answer any questions regarding these reports. 2) Mr. Taylor provided an update on the language changes to the LS Network Franchise. Council had requested a representative from LS Network provide a presentation. He stated a representative would not be available until March or April. We can proceed with the Ordinance to approve this agreement at this time or wait until a representative is available to attend. Council consensus was to move forward at this time. 3) Mr. Taylor stated that he is drafting a letter to send to our 19th District Legislative Delegation and enclosing a copy of our recently adopted Legislative Agenda. 4) He reminded Council of the AWC Legislative Conference which will be held February 13th and 14th in Olympia. 5) Mr. Taylor reminded everyone of the Lodging Tax Advisory Committee and Council Meeting scheduled for next Tuesday, January 22nd, at 6:00 p.m., where the future of the Visitor Center will be discussed. He reminded everyone the Visitor Center will be closing on January 20th. Mayor Fletcher clarified that since the new Council Rules have not yet been approved, the next Regular Council Meeting on February 5th will be held at 7:00 p.m.

COUNCIL REPORTS:

Kim Lefebvre: No Report.

Gary Archer: No Report.

Dan Myers: No Report.

Todd McDaniel: No Report.

Rick Roberson: Commented that it was ironic that he surprised everyone with the “No Surprise Rules”.

Gary Schimmel: No Report.

David Futcher: No Report.

There being no further business, Mayor Futcher adjourned the meeting at 7:59 p.m.

MAYOR

CITY CLERK

Mayor Fatcher opened the Special Meeting at 6:00 p.m. Those Councilmembers in attendance were: Fatcher, Archer, Roberson, Schimmel, Myers, McDaniel and Lefebvre.

PUBLIC HEARING – CDBG Funds for Replacement and Rehabilitation of Sewers

Mayor Fatcher opened the Public Hearing at 6:01 p.m. Community Development Block Grant Program Public Hearing handouts were available to the general public in English and Spanish. Mayor Fatcher invited citizens to comment. There being no discussion, Mayor Fatcher closed the public hearing at 6:02 p.m.

MOTION ITEM:

Resolution No. 13-1077 CDBG General Purpose Grant Funds : The Deputy Clerk read the proposed resolution by title only. Upon motion by Councilmember Roberson, seconded by Councilmember Lefebvre, 'pass Resolution No. 13-1077, 'A RESOLUTION OF THE CITY OF KELSO AUTHORIZING APPLICATION TO THE STATE OF WASHINGTON FOR CDBG FUNDS,' motion carried, all voting yes.

TOPIC OF DISCUSSION:

Lodging Tax Funding & Visitors Center Options

Lodging Tax Committee Members Present: Syed Pasha, Paul Thornton, Bill Marchum, and Todd McDaniel

City Staff Present: City Manager Steve Taylor, Public Works Director David Sypher, Finance Director Brian Butterfield, and Sherri Booth.

City Manager Steve Taylor summarized the necessity to evaluate the merits of replacing and operating the Visitors Center. He stated the following four options available for discussion.

- 1) Replace the Visitors Center with new, improved structure, signage and landscaping.
- 2) Do not replace Visitors Center. Find alternative marketing outlets to promote Kelso Tourism.
- 3) Remove the Visitors Center. Study options with the possibility of replacing structure.
- 4) Move the Visitors Center to a new location. (current City-owned building)

Committee Member Comments:

Syed Pasha spoke in favor of replacement of the Visitors Center with a new structure, signage, and landscaping at the current location.

Bill Thornton spoke regarding alternative use of Lodging Tax funds.

Bill Marcum spoke in favor of replacement of the Visitors Center with a new structure at the current location.

Todd McDaniel spoke in favor of the replacement of the Visitors Center with a new structure at the current location.

Cindy Keeney: Mr. Taylor provided comments from Cindy Keeney in her absence.

General Public Comments:

Rick Von Rock, 400 N. 7th, spoke in favor of the Visitors Center

Jim Hill, 1100 N. 22nd, spoke against the Visitors Center. He provided information and handouts about interactive kiosks.

Larry Alexander, 1517 N. 3rd, spoke in favor of the Visitors Center.

Scott DeRosier, 100 Jones Ct, spoke against the Visitors Center. Stating a Sports Commissioner would be a better use of funding.

Bill Cash, Longview, spoke in favor of the Visitors Center.

Lengthy discussion followed. Council consensus was to move forward with the replacement of the Visitors Center with a new improved structure.

There being no further business, Mayor Fletcher adjourned the meeting at 7:40 p.m.

MAYOR

CITY CLERK

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Public Hearing for Closeout of the CDBG Planning
Only Grant (11-64100-051) – N Kelso Sewer
Groundwater Study

Agenda Item: _____

Dept. of Origin: _____ Public Works

For Agenda of: _____ February 5, 2013

Cost of Item: _____

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Community Development Block Grant Information Sheet (English and Spanish)
Federal Citizen Participation requirements for Local Government of the State CDBG Program (English and Spanish)

SUMMARY STATEMENT:

The purpose of this Hearing is to review the performance of the City in completing the Planning Only grant from the Community Development Block Grant (CDBG). This project was developed to obtain information about groundwater conditions in the area of the remaining two phases (V and VI) of the N Kelso Sewer System Rehabilitation Project. The hearing will allow the City to receive comments on completed activities, particularly from lower income persons and persons residing in the North Kelso area.

The study was completed by Jerome W. Morrisette & Associates Inc., P. S. Work was performed between March 2012 and July 2012 and included the installation of monitoring wells, soil sieve analysis, and completion of a pumping test. The data collected was compiled into a report that will be used in the development of the plans and specifications of the sewer projects. The information collected shows that the groundwater is elevated (approximately 4.5 feet below the ground surface) and has a rapid recharge rate.

A copy of the completed report has been made available for review and comment in the Public Works Engineering Office. At this time no comments have been received. If any comments are received, they will be brought forward at the meeting. The project completed matches the project description in the CDBG Planning Only Grant Application.

FINANCIAL SUMMARY:

This project was partially funded by the Department of Commerce using a CDBG Planning Only Grant of \$24,000.00. The city match was \$11,235.00 for a total expenditure of \$35,235.00.

RECOMMENDED ACTION:

Staff recommends council receives public comments on the N Kelso Sewer Groundwater Study.



Community Development Block Grant Program

For More Information:

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**2013 amounts
are proposed,
contingent upon
approval of the
state 2013
Action Plan and
federal funding**

Introduction

The Washington State Community Development Block Grant (CDBG) program provides funds on a competitive basis for public facilities, community facilities, economic development, affordable housing, public services and planning projects that principally benefit low- and moderate-income persons.

Since 1982, the Washington State CDBG Program has distributed and managed over \$445 million from the U.S. Department of Housing and Urban Development (HUD). With this funding, the CDBG Program improves the economic, social and physical environment of eligible, rural cities and counties to enhance the quality of life for low- and moderate-income residents, and as a result, make a difference for the entire community.

2013 Funding Set-Asides

In 2013, approximately \$12 million in federal CDBG funds are anticipated to be awarded to Washington State. These funds are proposed to be distributed as follows:

- **General Purpose Grants** **\$9,750,000**
Contact: Kaaren Roe
Grants for public facility, community facility, affordable housing, or economic development projects principally benefiting low- and moderate-income persons in eligible rural communities. Annual competitive application cycle with maximum grant of \$750,000 or \$1 million if higher funding criteria are met. Application materials are released in November 2012, with applications due by January 31, 2013 and awards announced in May 2013.
- **Planning-Only Grants** **\$425,000**
Contact: Phyllis Cole
Grants for a range of planning activities that lead to implementation of priority projects for eligible small communities and rural counties. Maximum grants at \$24,000 or \$35,000 for critical public health issues where non-compliance, hardships and lack of other funding exist. Application materials are released in April 2013 and can be submitted year round beginning May 2013, with first awards announced by July 2013 and ongoing until all funds have been awarded.

- **Housing Enhancement Grants** **\$200,000**
 Contact: Kaaren Roe
 Companion funds to support priority applications submitted to the Washington State Housing Trust Fund, which fund necessary off-site infrastructure or community facility components of the affordable housing project.

- **Imminent Threat Grants** **\$125,000**
 Contact: Kaaren Roe
 Provides funds to address unique emergencies posing a serious and immediate threat to public health and safety on a funds availability basis. Upon formal Declaration of Emergency and completion of an Imminent Threat grant application, costs can be covered for a temporary repair or solution while funding for a permanent fix is secured.

- **Public Services Grants** **\$1,500,000**
 Contact: Laurie Dschaak
 Provides funds to 17 eligible counties and community action agencies to fund new or expanded direct services for persons with low- and moderate- incomes.

- **CDBG Economic Development Loans** **\$11,000,000**
 Contact: Mary Trimarco
 Provides eligible jurisdictions with short-term loans for economic development/job creation financing for CDBG-eligible activities meeting a HUD National Objective. Applications may be submitted on an ongoing, fund available basis.
 - Float Loan - Economic Development/Job Creation
 - HUD Section 108 Guarantee Loans

HUD National Objectives

CDBG project activities must meet one of three HUD National Objectives:

- Principally benefits low-and moderate-income persons
- Aids in the prevention or elimination of slums or blight
- Addresses imminent threat to public health or safety

CDBG Eligibility Guidelines

- Eligible applicants are Washington State cities/towns with less than 50,000 in population and not participating in a CDBG entitlement urban county consortium; and counties with less than 200,000 in population. Eligible cities/towns and counties are listed on the CDBG website.
- Special purpose districts, public housing authorities, community action agencies, economic development councils, other nonprofit organizations, and Indian tribes are not eligible to apply directly to the state CDBG Program for funding, but may be a partner in projects and subrecipient of funding with an eligible city/town or county applicant.
- Applicants may submit one request per fund each program year. Exception: An eligible city/town or county may apply for a second General Purpose Grant if one application is for a local microenterprise assistance program.

Federal Citizen Participation Requirements for Local Government Applicants to the State CDBG Program

Federal Regulations 24 CFR 570.486 (a)

(a) *Citizen participation requirements of a unit of general local government.* Each unit of general local government shall meet the following requirements as required by the state at Sec. 91.115(e) of this title.

- (1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;
- (2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;
- (3) Furnish citizens information, including but not limited to:
 - (i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);
 - (ii) The range of activities that may be undertaken with the CDBG funds;
 - (iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and
 - (iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's anti-displacement and relocation plans required under Sec. 570.488.
- (4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups;
- (5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;
- (6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. *Substantially changed* means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.
- (7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.



Subvención Global Para Desarrollo Comunitario

Para obtener más Información:

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2013 Cantidades
son propuestos,
depende de la
aprobación del
2013 plan de
acción del estado
y financiación
federal.

www.commerce.wa.gov/cdbg

Introducción:

El programa de Subvención Global para Desarrollo Comunitario del Estado de Washington (CDBG) proporciona fondos sobre una base competitiva para instalaciones de la comunidad y públicas, desarrollo económico, viviendas asequible, servicios públicos y proyectos de planificación que benefician principalmente a personas de ingresos bajos y moderados.

Desde 1982, el programa de CDBG del Estado de Washington ha distribuido y administrado más de 455 millones de dólares de los Estados Unidos departamento de vivienda y desarrollo urbano (HUD). Con este financiamiento, el programa CDBG mejora el entorno económico, social y físico de las ciudades rurales elegibles y condados para mejorar la calidad de vida para los residentes de ingresos bajos y moderados y en consecuencia, hacer una diferencia para toda la comunidad.

2013 Fondos Reservados

En 2013, aproximadamente 12 millones de dólares en fondos federales de CDBG se otorgará al Estado de Washington. Se propone que los fondos serían distribuidas como sigue:

- **Concesión de Propósito General** **\$9,750,000**
Contacto: Kaaren Roe
Las becas para instalaciones públicas y de la comunidad, la vivienda económica, o los proyectos de desarrollo económico que se benefician principalmente personas con ingresos bajos y moderados elegibles en las comunidades rurales. Ciclo anual competitiva aplicación con subsidio/beca máximo de \$750.000 o un millón de dólares si se cumplen los criterios de una financiación mayor. Aplicación materiales son liberados en Noviembre 2012, con aplicaciones debido al 31 de enero, 2013 y premios en 2013 Mayo.
- **Concesión para Planificación Solamente** **\$425,000**
Contacto: Phyllis Cole
Becas para la planificación de una serie de actividades que conducen a la realización de proyectos elegibles para prioridad comunidades pequeñas y condados rurales. Becas Máximo de \$ 24,000 o \$ 35,000 para los temas críticos de salud pública en caso de incumplimiento, dificultades y la falta de otras fuentes de financiación existentes. Materiales de la solicitud de publico en Mayo 2013, y se puede presentar ano redondo y empezar en Mayo de 2013 asta que todos los fondos se han otorgado.
- **Concesión para Mejora de la Vivienda** **\$200,000**
Contacto: Kaaren Roe
Fondos de acompañante para soportar aplicaciones de prioridad enviadas a Washington estado vivienda Fondo Fiduciario, que financian infraestructura fuera necesaria o componentes de servicio comunitario del proyecto de vivienda razonable.

- **Concesión de Amenaza Inminente** **\$125,000**
 Contacto: Kaaren Roe
 Proporciona fondos para atender las emergencias que plantea un único peligro grave e inmediato para la salud y la seguridad pública en una disponibilidad de fondos base. Sobre la formal declaración de emergencia y realización de una amenaza inminente conceder la aplicación, pueden cubrir los costos para una reparación temporal o solución mientras que la financiación para una solución permanente está asegurado.

- **Concesión para Servicios Públicos** **\$1,500,000**
 Contacto: Kaaren Roe
 Proporciona fondos para los 17 condados elegibles y agencias de acción comunitaria para financiar servicios directos nuevos o ampliados para las personas con ingresos bajos y moderados.

- **Portafolio de Empréstitos Comercial-CDBG** **\$11,000,000**
 Contacto: Mary Trimarco
 Proporciona jurisdicciones elegibles con préstamos a corto plazo para el desarrollo económico/financiación para la creación de empleo CDBG actividades elegibles que complan un objetivo HUD Nacional. Aplicación podrán presentarse en forma permanente, disponible fondo.
 - Float Préstamo de Desarrollo Económico/La creación de empleo
 - HUD Sección 108 Préstamos Garantizados

HUD Objetivos Nacionales

Las actividades de proyectos de HUD CDBG de objetivos nacionales deben cumplir uno de los tres objetivos nacionales de HUD:

- Beneficia principalmente a las personas de ingresos bajos y moderados
- Ayudas en la prevención o eliminación de barrios pobres y insalubres o tizón
- Enfrenta una amenaza inminente para la seguridad o la salud pública

CDBG-Guía de Elegibles

- Los solicitantes elegibles son ciudades y pueblos del estado de Washington con poblaciones menores de 50,000 o condados con poblaciones menores de 200,000 que son jurisdicciones que no reciben asistencia financiera directa o no son participantes en un Consorcio de Asistencia Financiera Directa del Condado Urbano de HUD.
- Naciones indias y organizaciones con propósitos especiales, tales como autoridades de hogares públicos, estritos portuarios, agencias de acción a la comunidad y consejos de desarrollo económico, no califican para solicitar directamente financiamiento al Programa de CDBG. Sin embargo, jurisdicciones que si califiquen pueden optar por incluir naciones indias o otras organizaciones en actividades financiadas por una subvención.
 Los solicitantes pueden presentar una solicitud en cada ciclo del financiamiento. La excepción es los solicitantes de asistencia microenterprise pueden presentar dos.

Requisitos de Participación Ciudadana Federal Para Solicitantes del Gobierno Local al Programa de CDBG

Regulación Federal 24 CFR 570.486(a)

- (a) *Requisitos de participación ciudadana de una unidad general del gobierno local.* Cada unidad general del gobierno local, debe cumplir los siguientes requisitos como es solicitado por el estado, en el Sec. 91.115(e) de este artículo.
- (1) Contribuir y motivar a la participación ciudadana, particularmente en personas de recursos bajos y moderados quienes residen en condiciones precarias o áreas insalubres y áreas donde el Programa de CDBG tiene como objetivo apoyar con financiamiento;
 - (2) Asegurar que los ciudadanos tengan acceso oportuno y suficiente a reuniones locales, información y estadísticas relacionadas a la unidad de gobierno local que ha sido propuesta o que utiliza los fondos de financiamiento del programa de CDBG;
 - (3) Proveer información a los ciudadanos, incluyendo:
 - i. La cantidad de financiamientos del de CDBG que se espera sea otorgada en el año fiscal en curso (incluyendo las subvenciones y los ingresos anticipados del programa);
 - ii. El tipo de actividades probables a llevarse a cabo con el financiamiento del de CDBG;
 - iii. La cantidad estimada de financiamientos del de CDBG propuesta para ser usada en actividades que cumplirán con el objetivo nacional de beneficiar a personas de bajos recursos económicos; y
 - iv. Las actividades propuestas del programa de CDBG que son probables de resultar declinadas y la unidad general de gobierno y los planes de reemplazo requeridos bajo el Sec. 570.488
 - (4) Proveer asistencia técnica a grupos representativos de personas de bajos y moderados recursos que soliciten ayuda en el desarrollo de sus propuestas de acuerdo con el procedimiento desarrollado por el estado. Dicha asistencia no incluye proveer financiamiento a tales grupos;
 - (5) Participar en un mínimo de dos audiencias públicas, cada una en diferentes etapas del programa, con el propósito de obtener puntos de vista de los ciudadanos y responder a propuestas y preguntas. La audiencia en conjunto debe cubrir las necesidades de casa y desarrollo en la comunidad, desarrollo de actividades propuestas y la revisión del cumplimiento del programa. La audiencia pública que cubre el desarrollo de la comunidad y las necesidades de casa debe ser llevada a cabo en la fecha y lugares convenientes a beneficiarios actuales a potenciales, con lugares accesibles para discapacitados. Las audiencias publicas deben llevarse a cabo de cierta forma que cumplan las necesidades de residentes que no hablen Inglés ya que se espera que un numero razonable de estos participe en el programa.
 - (6) Informar a los ciudadanos con suficiente anticipación, y oportunidad de comentar al respecto, sobre actividades propuestas en solicitud al estado y, por subvenciones ya efectuados, actividades que sean propuestas para agregarse, eliminarse a ser cambiadas substancialmente de la solicitud de unidad general de gobiernos locales al estado. Cambiadas substancialmente significa que los cambios sean en términos de objetivo, alcance, lugar o beneficiario, como es definido bajo el criterio establecido por el estado.
 - (7) Proveer a los ciudadanos la dirección, el teléfono y las fechas y horario para entregar quejas y objeciones, y proveer oportunas respuestas por escrito a quejas entregadas por escrito, dentro de los primeros 15 días hábiles, cuando así pueda aplicarse.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Park Board Reappointments

Agenda Item: _____

Dept. of Origin: City Manager

For Agenda of: February 5, 2013

PRESENTED BY:

Steve Taylor

Cost of Item: _____

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

N/A

SUMMARY STATEMENT:

Due to a misinterpretation of Ordinance 05-3562 some of the Park Board terms of service end dates are in need of correction. Following their next end of term, all positions will be reappointed to a four year term. These corrections were approved by the Park Board at their January 17, 2013 meeting.

Reappointments

- a. Dan Jones, Term to End 1/1/2013
- b. Pamela Jo Enbusk, Term to End 1/1/2015
- c. Scott DeRosier, Term to End 1/1/2016

FINANCIAL SUMMARY:

N/A

RECOMMENDED ACTION:

Staff recommends approval of these reappointments.

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Interlocal Agreement with the City of Longview for the Operation, Maintenance and Repairs of traffic signal systems in the City of Kelso

Agenda Item: _____

Dept. of Origin: Public Works Department

For Agenda of: February 5, 2013

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

Cost of Item: N/A

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Interlocal Agreement with City of Longview

SUMMARY STATEMENT:

The City had a long term contract with WSDOT to maintain city owned signal lights that they terminated due to lack of personnel. The City does not have available or trained staff to perform these duties. The City of Kelso would like to enter into an agreement with the City of Longview for the maintenance, operation and repairs of the traffic signal system within the City of Kelso. Signal lights included would be 13th/Grade, Allen/Minor Road, N. Kelso Ave./Red Path and West Main/5th. The City Manager's Signature is required.

City of Longview Traffic Division will perform this work on a reimbursable basis.

FINANCIAL SUMMARY:

Traffic Signal Maintenance, Operation and Repairs Requested are budgeted in the 2013 City Street Fund.

RECOMMENDED ACTION:

Make a motion approving the City of Kelso to enter into an Interlocal Agreement with City of Longview for the maintenance, operation and repair of traffic signal systems and to allow the City Manager to sign said agreement.

EXHIBIT A

INTERLOCAL AGREEMENT BETWEEN CITY OF KELSO AND CITY OF LONGVIEW FOR TRAFFIC SIGNAL SYSTEMS

This agreement is entered into between the City of Kelso (Kelso) and the City of Longview (Longview) pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW.

I. PURPOSE

The purpose of this agreement is for Longview to provide operation, maintenance, and repair services to Kelso for traffic signal systems in Kelso.

II. SERVICES

Longview shall provide labor, equipment, and materials necessary for the operation, maintenance, and repair of the traffic signal systems located within Kelso city limits, as requested by Kelso. Such service shall not be provided for traffic signals operated, maintained, and repaired by the Washington State Department of Transportation on designated state routes. It is understood and agreed that Longview shall have first claim upon its equipment and personnel, to meet the needs that occur within Longview, and that the needs of Kelso shall be secondary thereto.

III. COMPENSATION

Kelso agrees to compensate Longview for services rendered as requested by Kelso. Such services shall include mutually agreed opportunities for Longview staff to become familiar with Kelso traffic signal systems, in advance of any regular or emergency operation, maintenance, or repair service. Service provided by Longview shall be billed at the following rates:

Labor &

Administration Direct Labor plus benefits in effect at the time service is performed.

Equipment &

Vehicles Equipment and vehicle rental rates in effect at the time of service, as determined by the Longview Fleet Department. If equipment is rented from an outside party, Kelso shall pay the full rental invoice amount plus 10% markup.

Materials &

Supplies Direct cost plus 10% markup

Kelso will make payment to Longview within 45 days of receipt of a bill for services provided.

IV. ADMINISTRATION

This agreement will be administered by Longview.

V. INDEPENDENT CONTRACTOR

The services provided under this agreement are those of an independent contractor. Employees of the City of Longview are and will remain employees of Longview. Employees of the City of Kelso are and will remain employees of Kelso.

VI. INDEMNIFICATION

A. Kelso Indemnification.

Except as provided in subsection B below, Kelso agrees to indemnify, defend and hold Longview, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by operation, maintenance, or repair of traffic signals within the city of Kelso; by the acts, errors or omissions of Kelso, its partners, shareholders, agents, employees; or by Kelso's breach of this Agreement. Kelso waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Kelso's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs.

B. Longview Indemnification.

Longview agrees to indemnify and hold Kelso, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of Longview, its partners, shareholders, agents, employees, or by Longview's breach of this Agreement. Longview waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. Longview's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs.

C. Survival.

The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

VII. AMENDMENT

The parties may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind the City of Longview and the City of Kelso.

VIII. CHOICE OF LAW AND VENUE

This agreement will be governed by the laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity or other judicial proceeding for the enforcement of this agreement may be instituted only in a court of competent jurisdiction in the State of Washington, County of Cowlitz.

IX. INTEGRATION CLAUSE

This Instrument embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained in this agreement. This agreement supersedes all previous communications, representations or agreements, either oral or written, between parties.

X. TERM AND TERMINATION

This agreement shall be for a term of two years and shall be renewed automatically for additional two year terms unless earlier terminated by either party.

Either party may terminate this agreement by giving the Public Works Director of the other party at least thirty (30) days advance written notice. If this Agreement is so terminated, the terminating party shall be liable only for performance in accordance with the terms of this Agreement for performance rendered prior to the effective date of termination.

XI. PROPERTY AND EQUIPMENT

Upon termination or non-renewal of this agreement, all property and equipment purchased by Longview in furtherance of this agreement shall remain the property of Longview and all property and equipment purchased by Kelso in furtherance of this agreement shall remain the property of Kelso. All property and equipment purchased by Longview and reimbursed by Kelso shall become the property of Kelso. All property shall be returned to its owner upon termination or non-renewal of this Agreement.

XII. DISPUTES

In the event that a dispute arises under this Agreement, it will be resolved in the following manner: Longview and Kelso will each individually appoint one member to a Dispute Board and jointly appoint a third member. The Dispute Board will evaluate the dispute and make a determination of the dispute. The decision of the Dispute Board may be appealed to the Superior Court for *de novo* review.

XIII. FILING

This agreement will be filed with the Cowlitz County Auditor's Office.

XIV. EFFECTIVE DATE

This agreement will take effect on the last date executed below, and will remain in effect unless terminated as provided herein.

Executed this _____ day of

_____, 2013.

Executed this 17th day of

January, 2013.

CITY OF KELSO
CITY MANAGER

CITY OF LONGVIEW
CITY MANAGER



ATTEST:

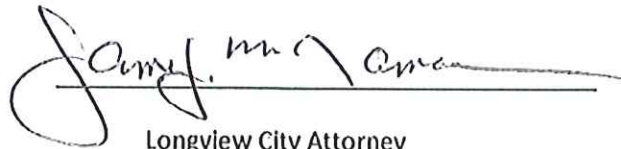
ATTEST:



APPROVED AS TO FORM:

Kelso City Attorney

APPROVED AS TO FORM:



Longview City Attorney

AGENDA SUMMARY SHEET

Business of the City Council

City of Kelso, Washington

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**SUBJECT TITLE: Liquor License
Renewal(s)**

Agenda Item No: _____

Dept. of Origin: **Finance**

Date of Meeting: **February 5, 2013**

Originator: **Brian Butterfield** *HB*

PRESENTED BY: Brian Butterfield

City Attorney: _____

City Manager: _____

Agenda Item Attachments:

See attached request for Liquor License Renewal(s):

Kelso AM/PM
B.P.O. Elks Kelso Lodge

1700 Allen Street E
900 Ash St

SUMMARY STATEMENT:

Various departments have been requested to give their input. Comments will be available by the date of the City Council Meeting. The Finance Staff recommends this request be acted on by the City Council.

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 01/06/2013

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF KELSO
(BY ZIP CODE) FOR EXPIRATION DATE OF 20130430

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1. A & F PETROLEUM, INC.	KELSO AM/PM 1700 ALLEN ST E KELSO WA 98626 0000	362642	GROCERY STORE - BEER/WINE
2. KELSO-LONGVIEW LODGE NO. 1482 BENEVOLENT AND PROTECTIVE ORDE OF THE UNITED STATES OF AMERIC	B.P.O. ELKS KELSO LODGE 1482 900 ASH ST KELSO WA 98626 2699	353621	PRIVATE CLUB - SPIRITS/BEER/WINE NON-CLUB EVENT

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Resolution Adopting Council
Rules for the City Council of Kelso.

Agenda Item:_____

Dept. of Origin:_____ City Manager

For Agenda of:_____ February 5, 2013

Originator: Steve Taylor_____

PRESENTED BY:

Steve Taylor

City Attorney: Janean Parker

City Manager: Steve Taylor

Agenda Item Attachments:

Resolution
Council Rules

SUMMARY STATEMENT:

In accordance with Article 2.09 of the Kelso City Charter, "(t)he city council shall determine its own rules and order of business..." The Council amended its formal governing rules in January 2012 which include for periodic review of the rules and procedures set forth therein with a mandatory review at least once every two years. Following direction from the Council, staff reviewed the rules and brought recommended changes for consideration at the January 15th, 2013 meeting. Council offered additional changes including a revision to the regular meeting start time and limiting public comment to three minutes from five minutes per speaker. The Council also directed that "no surprise" rules be added to the document, with a final draft ready for consideration on Feb. 5th, 2013.

Staff has also prepared amendments to KMC 2.04 City Council that remove redundant rules already addressed through the Council Rules resolution. These amendments necessitated the removal of KMC references within the Council Rules document.

Earlier versions of the council rules have been adopted by motion. Staff is proposing that these rules, as amended, be adopted by resolution.

RECOMMENDED ACTION:

Move to approve the resolution amending the Council Rules of Procedure.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF KELSO ADOPTING RULES AND
PROCEDURES OF THE KELSO CITY COUNCIL.**

WHEREAS, On January 17, 2012, the Kelso City Council adopted the 'Council Rules' to govern both its internal management and the procedures available to the public, in conformance with the customary practice of legislative bodies; and

WHEREAS, the Council Rules should guide and facilitate Councilmember duties and meeting deliberations as well as provide the public with an understanding of council functions; and

WHEREAS, periodic alterations to the Council's internal procedures are appropriate to better serve the Council's needs.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KELSO DO
HEREBY RESOLVE AS FOLLOWS:

SECTION I. The 'Council Rules' of the Kelso City Council, dated February 5, 2013, attached to this resolution, are adopted as the official rules and procedures of the Kelso City Council.

SECTION 2: This resolution shall be effective immediately upon its adoption

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of _____, 2013

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

KELSO CITY COUNCIL

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Council Rules of Procedure

SECTION 1. GENERAL.

These rules constitute the official rules of procedure for the Kelso City Council. In all decisions arising from points of order which are not covered by these rules, the Council shall be governed by Robert's Rules of Order (newly revised), a copy of which is maintained in the office of the Kelso City Clerk. The City Attorney shall decide all questions of interpretations of these rules and other questions of a parliamentary nature which may arise at the Council meeting.

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SECTION 2. ORGANIZATION.

- A. Swearing in of New Councilmembers. New Councilmembers shall be sworn in by the City Clerk or delegate. The swearing in will occur at the first meeting of the City Council held in January following certification of the election.
- B. Election of Mayor and Deputy Mayor. The motion to elect the Mayor and the Deputy Mayor will be placed on the Agenda of the first regular City Council meeting in January following certification of the election and the Mayor and Deputy Mayor will serve in office for a term as specified by city charter. During the election of Mayor and Deputy Mayor, the city clerk shall serve as Chair.

In the event the Mayor is unable to serve the remainder of the term, due to his or her removal from office, or his or her resignation as Mayor or from the City Council, or upon his or her death, the Deputy Mayor shall serve as Mayor for the remainder of that term and a new Deputy Mayor shall be elected.

In the event the Deputy Mayor is unable to serve the remainder of the term, a new Mayor shall be elected at the next regular meeting.

1. Nomination Procedure. No one Councilmember may nominate more than one person for a given office until every member wishing to nominate a candidate has an opportunity to do so. Nominations do not require a second vote. The Chair will repeat each nomination until all nominations have been made. When it appears that no one else wishes to make any further nominations, the chair will ask again for further nominations and if there are none the Chair will declare the nominations closed. A motion to close the nominations is not necessary.
 2. Voting Procedure. After nominations have been closed, voting for Mayor takes place in the order nominations were made. Councilmembers will be asked for a raise of hands. As soon as one of the nominees receives a majority vote (four votes), then the Chair will declare the nominee elected. No votes will be taken on the remaining nominees. A tie vote results in a failed nomination. If none of the nominees receive a majority vote, the Chair will call for nominations again and repeat the process until a single candidate receives a majority vote before the Office of Deputy Mayor is opened for nominations.
- C. General Decorum.
 1. While the Council is in session, the members must preserve order and decorum, and a member shall neither, by conversation or otherwise, delay or interrupt the proceedings or

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the peace of the Council, nor disrupt any member while speaking, nor refuse to obey the orders of the Council or the Mayor, except as otherwise provided in these Rules.

2. Any person making personal or slanderous remarks or who becomes disorderly while addressing the Council or while in the Council Chamber while the Council is in session, shall be asked to leave by the Presiding Officer.

D. Confidentiality.

1. Councilmembers shall keep confidential all written materials and verbal information provided to them during Executive Sessions, to ensure that the City's position is not compromised. Confidentiality also includes information provided to Councilmembers outside of Executive Sessions when the information is considered to be exempt from disclosure under the Revised Code of Washington or under Public Disclosure Ordinance adopted by the Council.
2. If the Council, after Executive Session, has provided direction or consensus to City staff on proposed terms and conditions for any confidential or privileged issue, all contact with any other party shall be made by the designated City staff representative handling the issue. Councilmembers should consult with the City Manager and/or City Attorney prior to discussing such information with anyone other than other Councilmembers, the City Attorney or City staff designated by the City Manager. Any Councilmember having any contact or discussion with any person other than those listed above on any such confidential or privileged issue shall make full disclosure to the City Manager and Council in a timely manner.

E. Council Conduct – "No Surprise" Doctrine. Councilmembers should adhere to the "Doctrine of No Surprises" in an attempt to conduct Council business with the most thorough information available during Council meetings. The doctrine is meant as a general guideline to be followed and not a mandate.

1. Councilmembers should take adequate time for preparation prior to each Council meeting to review agenda materials, take notes, and visit sites as necessary.
2. The City Manager or staff should be contacted prior to each meeting for questions that arise or require additional research.
3. Inform the City Manager prior to each meeting if questions or requests for research have been asked of staff.
4. Notify the City Manager, the Mayor and fellow Councilmembers prior to a meeting if a member plans to bring forward an item that is not currently on the agenda.

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F. City Clerk. The Clerk or an authorized Deputy Clerk shall attend all Council Meetings. If the Clerk and the Deputy Clerk are absent from any Council Meeting, the City Manager shall appoint a Clerk Pro Tempore for that meeting only.

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SECTION 3. OFFICERS.

- A. Presiding Officers. The Mayor, or in his or her absence, the Deputy Mayor, shall be the Presiding Officer of the Council. In the absence of both the Mayor and the Deputy Mayor, the Council shall appoint one of the members of the Council to act as a temporary Presiding Officer.
- B. Presiding Officer's Duties. It shall be the duty of the Presiding Officer to:
 1. Call the meeting to order

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2. Keep the meeting to its order of business
 3. Control discussion in an orderly manner
 - a. Every Councilmember who wishes an opportunity to speak must be recognized by the chair.
 - b. Permit audience participation at the appropriate times.
 - c. Require all speakers to speak to the question and to observe the rules of order.
 4. State each motion before it is discussed and before it is voted upon.
 5. Put motions to a vote and announce the outcome.
- C. Presiding Officer, Question or Order. The Presiding Officer shall decide all questions of order, subject to the right of appeal to the Council by any member.
- D. Request for Written Motions. Motions shall be reduced to writing when required by the Presiding Officer of the Council or any member of the Council. All resolutions and ordinances shall be in writing.

SECTION 4. DUTIES AND PRIVILEGES OF COUNCILMEMBERS.

- A. Forms of Address. The Mayor shall be addressed as "Mayor (surname)." "Your Honor," or Mr./Madam Mayor. Members of the Council shall be addressed according to their preference as "Councilmember (surname)," "Councilor (surname)," or Mr./Mrs./Miss/Ms. (surname).
- B. Seating Arrangement at Regular Meetings. The Mayor shall sit at the center of the Council, and the Deputy Mayor shall sit at the right hand of the Mayor. Other Councilmembers are to be seated in accordance with KMC 2.04.070. If there is a dispute, seating shall be in position order.

SECTION 5. CITY ADVISORY COMMITTEES

The City of Kelso's Commissions, Committees, and Task Forces provide an invaluable service to the City. Their advice on a wide variety of subjects aids the Council in the decision-making process. Effective citizen participation is an invaluable tool for local government. All City Advisory Committees are advisory to the City Council and are not authorized to take independent action representing the City with other agencies or bodies.

- A. Establishment of Advisory Bodies. These advisory bodies will be established by City Resolution or Ordinance, if required by state statute. The enacting resolution will set forth the size of each advisory group, which will be related to its duties and responsibilities; the term of office of its members; a statement of its purpose and function; and time lines, if relevant to the scope of work. The Council may dissolve any advisory body that, in their opinion, has completed its working function or for any other reason.
- B. Appointments to Advisory Bodies. Vacancies may be advertised so that any interested citizen may submit an application. Applicants are urged to be citizens of the City of Kelso, but applications from residents living outside of the corporate boundaries may be considered if authorized by the resolution or ordinance establishing the advisory body.

Appointments to advisory bodies will be made by the City Council during a regularly scheduled meeting. Newly appointed members will receive a briefing by the Commission, Committee, or Task Force Chairperson and/or City staff regarding duties and responsibilities of the members of the advisory body. Appointees to advisory bodies may be removed prior to the expiration of their term of office by a majority vote of the City Council.

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- C. Conduct of Business. The advisory body will normally adopt rules for transaction of business, and will determine the number of meetings necessary for the business needs of the advisory group, unless otherwise established in the enacting resolution or ordinance. All meetings are subject to the public meetings laws of the State of Washington and City Ordinance.

SECTION 6. COUNCIL COMMITTEES/APPOINTMENTS

Council committees are policy review and discussion arms of the City Council. Committees may study issues and develop recommendations for consideration by the City Council. Committees may not take binding action on behalf of the City.

The City Council may meet for study or special project purposes as a Committee of the Whole or may establish Council subcommittees with three or fewer members.

Council Committee structure shall be as determined by the City Council in January of each year and may include:

- A. Council Committee of the Whole - (Seven Councilmembers)
- B. Subcommittees of the City Council - Ad hoc and informal working or study group (three or fewer Councilmembers)
- C. Councilmember appointments - to task teams or City advisory boards, commissions and committees (three or fewer Councilmembers)
- D. Liaison/Representative Appointments - to other advisory bodies or groups.

SECTION 7. MEETINGS.

All Council Meetings shall comply with the requirements of the Open Meetings Act (Chapter 42.30 RCW). All Regular Meetings and Special Meetings of the Council shall be open to the public.

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The City Manager, or his or her designee, shall attend all meetings of the City Council including Regular meetings, special meetings, and executive session, except if Council meets in Executive Session with the City Attorney on matters of potential conflict for the City Manager.

- A. Regular Meetings. The Council shall hold Regular Meetings on the first and third Tuesday of each month. The Regular Meeting will begin at 6:00 p.m., unless an Executive Session is scheduled at the beginning of the agenda.
- B. Special Meetings. Special Meetings may be held by the Council subject to notice requirements prescribed by State law. Special Meetings may be called by the Mayor, Deputy Mayor, or any three members of the City Council by notice delivered by regular or electronic mail to each member of the Council and to each local media outlet which has requested notice at least twenty-four hours before the time specified for the proposed meeting. The notice of such Special Meetings shall state the subjects to be considered, and no subject other than those specified in the notice shall be considered.
- C. Executive Sessions. The Council may hold Executive Sessions from which the public may be excluded, for those purposes set forth in RCW 42.30.110. Before convening an Executive Session, the Presiding Officer shall announce the purpose of the Session and the anticipated time when the Session will be concluded. Should the Session require more time, a public announcement shall be made that the Session is being extended. No formal action or decision of the Council may be taken in Executive Session.

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- D. Emergency Meetings. If at any time there is a need for expedited action by the City Council to meet an emergency situation, the Mayor, or in the absence of the Mayor, the Deputy Mayor or any three members of Council, may call an emergency meeting at a place and time as necessary, and the noticing requirements of Title 42, RCW, or City ordinance or rule, may be waived.
- E. Adjournment. Regular and Special Council Meetings shall adjourn no later than 9:00 p.m. The adjournment times established hereunder may be extended to a later time certain upon approval of a motion by a majority of the Council. During regular and special meetings, any Councilmember may call for a "Point of Order" at 8:30 p.m. to review agenda priorities.
- F. Meeting Place. Council Meetings will be a time and place as Council directs. Regular and/or Special meetings shall generally be held within the boundaries of the City. The Council will not take final action on items during meetings held outside the boundaries of the City.
- G. Public Notice. The City shall comply with the provisions of RCW 35A.12.160.

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SECTION 8. COUNCIL ORDER OF BUSINESS.

- A. Order of Business for Regular Meetings. The order of business for each Regular Meeting shall be as follows:
1. Call to Order
 2. Roll Call, Flag Salute
 3. Approval of Minutes of Previous Meeting
 4. Commendations/Presentations
 5. Citizens' business
 6. Public Hearing
 7. Consent agenda and Auditing of Accounts
 8. Ordinances, Resolutions and Motions
 9. Reports of City Manager and Department Heads
 10. Council Comments/Council Committee Reports
 11. Executive Session (as necessary)
 12. Adjournment
- B. Council Agenda. When necessary, the Mayor or other Councilmember, with the consent of the Council, may change the order of business. All ordinances or resolutions must be on the agenda to be voted upon; a motion to suspend the rules would be necessary in order to vote on an ordinance or resolution not on the agenda.

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SECTION 9. CONDUCT OF BUSINESS

- A. Motions. Business is brought before the council by motions, which constitute a formal procedure for taking actions. To make a motion, a member must first be recognized by the presiding officer. After the member has made a motion (and after the motion is seconded if required) the chair must then restate it or rule it out of order, then call for discussion.
- B. Debate. As required by Robert's Rules of Order, a member may speak twice on each motion. Each time a Councilmember is recognized, the Councilmember may speak to the motion for no longer than five minutes. No Councilmember may speak a third time to a motion without the consent of the Council.
- C. Staff Input. During regular or special meetings of the Council, the presiding officer will call for a staff report on business items as the agenda is considered and before a motion is entertained by

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the presiding officer. Once a motion is pending, debate is limited to Councilmembers; additional staff input will be limited to providing clarification on issues if requested by a Councilmember.

- D. Reconsideration. A motion to reconsider is in order during the meeting after a motion has been acted upon either at the same meeting or at the next regular or special meeting of the Council. It must be made by a member who voted on the prevailing side, i.e., if a motion fails to pass, reconsideration must be moved by one who voted against the motion. It is debatable and requires a majority vote.

SECTION 10. PUBLIC TESTIMONY.

A. Public Comment

During Regular or Special Meetings of the Council, public comments will be invited during the Public Comment portion of the agenda. The public is also invited to provide written comment on any non-quasi-judicial or legislative matter. It is encouraged that such written comments be filed with the clerk by 1:00 p.m. of the Wednesday preceding the Regular Meeting. If written comments are given at the meeting, the presenter should provide eleven copies for the Council and staff.

In addition, public oral testimony may be taken on other non-quasi-judicial or legislative matters as they arise during the course of the meeting agenda. However, once a motion is pending, debate is limited to Councilmembers and no further public comment will be taken, unless a Councilmember requests further testimony.

Public comments should be limited to no more than three minutes per person. The Presiding Officer may, with consent of the Council, further limit individual comment length and total comment time allocated to a topic.

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- B. Identification of Speakers. Persons testifying shall identify themselves for the record as to name, address and organization.
- C. Instructions for Speakers. An instruction notice and signup sheet will be provided at the entrance to the Council chambers. Persons testifying should address their comments to the City Council, not the audience.
- D. Addressing Council Outside of a Public Hearing or Public Comments. No person shall be allowed to address the Council while it is in session without the recognition of the Presiding Officer.

SECTION 11. CONSENT AGENDA.

- A. The City Manager, in consultation with the Presiding Officer, shall place matters on the Consent agenda which: (a) have been previously discussed or policies set by the Council, or (b) based on the information delivered to members of the Council, by the administration, can be reviewed by a Councilmember without further explanation, or (c) are so routine or technical in nature that passage is likely.
- B. The motion to adopt the Consent agenda shall be non-debatable and have the effect of moving to adopt all items on the Consent agenda. Since adoption of any item on the Consent agenda implies unanimous consent, any member of the Council shall have the right to remove any item from the Consent agenda. If any matter is withdrawn, the Presiding Officer shall place the item at an appropriate place on the agenda for deliberation at the current or future Council Meeting.

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SECTION 12. PUBLIC HEARINGS.

The Public Hearing is a formal opportunity for citizens to give their views for consideration in the legislative or policy-decision-making process. In addition, public hearings are required on quasi-judicial actions which determine the legal rights, duties, or privileges of specific parties. The following rules shall be observed during public hearings:

A. Legislative/Information Gathering Public Hearing:

1. Open Public Hearing - The Mayor will open the public hearing.
2. Staff Presentation - For an initial presentation of background information from a City Department, a City Board, Commission, or Committee, or an organization such as the Fire District, the Library District, or the School District, no more than 20 minutes will be allowed, unless otherwise authorized by the Presiding Officer.
3. Citizen Comments - Comments will be limited to four minutes from individuals or from persons speaking as a representative of an organization, club, or group. The Presiding Officer may allow additional time for receipt of written testimony, when needed.
4. Staff Comments - Additional staff comments may be requested by Council following citizen comments.
5. Close Public Hearing - At the conclusion of Citizen or Staff Comments, the Presiding Officer will close the public hearing.
6. Council Deliberation.
7. Council Action.
8. Timekeeper. The City Clerk shall be the timekeeper.

B. Quasi-Judicial Public Hearings:

Public oral testimony shall not be given on quasi-judicial matters outside of a public hearing except on matters of procedure. If a quasi-judicial hearing is on the agenda, the public will be informed by the City Attorney as to what state law permits as to public comments. In addition, quasi-judicial hearings will be conducted in conformance to procedures outlined in other City ordinances.

SECTION 13. AGENDA PREPARATION.

- A. The Clerk will prepare a preliminary agenda for each Council Meeting specifying the time and place of the meeting and setting forth a brief general description of each item to be considered by the Council.
- B. An item for a Regular Council meeting may be placed on the preliminary agenda by any of the following methods:
 1. A majority vote of the Council;
 2. Council consensus;
 3. By any two Councilmembers, in writing or with phone confirmation, with signatures by fax or electronic mail allowed for confirmation of support, no later than 12:00 (noon) four business days prior to the meeting. The names of the requesting Councilmembers shall be set forth on the agenda;

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4. By the City Manager;
5. By a Council Committee;

C. Agenda items that are continued from one meeting to another will have preference on the agenda to the extent possible.

SECTION 14. EFFECT/WAIVER OF RULES.

It is the intent of the City Council that council procedures be periodically reviewed as needed, but no less than every two years. Accordingly, Council procedures shall be considered in the month of January of every even-numbered year, and may be considered at any other time that Council shall choose to review them.

These rules of procedure are adopted for the sole benefit of the members of the City Council to assist in the orderly conduct of Council business. These rules of procedure do not grant rights or privileges to members of the public or third parties. Failure of the City Council to adhere to these rules shall not result in any liability to the City, its officers, agents, and employees, nor shall failure to adhere to these rules result in invalidation of any Council act. The City Council may, by a two-thirds vote of those members present and voting, determine to temporarily waive any of the provisions herein. A two-thirds vote is five of seven votes, four of six votes, four of five votes, and three of four votes.

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AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE:

Declare item as surplus; no longer of use to the city.

Agenda Item: _____

Dept. of Origin: Public Works Department

For Agenda of: February 05, 2013

Cost of Item: Not Applicable

PRESENTED BY:

David M. Sypher, P.E.
Public Works Director

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Copy of proposed resolution declaring item as surplus.

SUMMARY STATEMENT:

The following item is no longer in working condition and the cost of repair greater than the items value, therefore, is of no further use to the City of Kelso and will be disposed of per city policy:

(1) – HON File Cabinet (Kelso Tag #00452)

FINANCIAL SUMMARY:

Not Applicable

RECOMMENDED ACTION:

Staff recommends a motion declaring the File Cabinet as surplus and to be disposed of per city policy.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF KELSO, WASHINGTON,
DECLARING CERTAIN PERSONAL PROPERTY OF THE CITY
OF KELSO TO BE SURPLUS AND DIRECTING THE
DISPOSITION THEREOF.**

THE CITY COUNCIL OF THE CITY OF KELSO DO HEREBY RESOLVE:

SECTION 1. The item(s) of personal property listed below are hereby declared
to be surplus as it is no longer in working condition and is no longer a use to the City:

1 – HON File Cabinet (Kelso Tag #00452)

SECTION 2. The personal property described herein shall be disposed of
according to city policy.

ADOPTED by the City Council and **SIGNED** by the Mayor this _____ day of
_____, 2013.

MAYOR

ATTEST/AUTHENTICATION:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

AGENDA SUMMARY SHEET

Business of the City Council City of Kelso, Washington

SUBJECT TITLE: Ordinance (1st Reading)
amending KMC 2.04 City Council.

Agenda Item: _____

Dept. of Origin: _____ City Manager _____

For Agenda of: _____ February 5, 2013

Originator: _____ Steve Taylor _____

PRESENTED BY:

Steve Taylor

City Attorney: _____ Janean Parker

City Manager: _____ Steve Taylor

Agenda Item Attachments:

Ordinance
Attachment A – KMC 2.04 Amendment (redlined)

SUMMARY STATEMENT:

Council previously provided staff with direction to amend the City Council Rules of Procedure and to change the commencement of regular Council meetings from 7:00pm to 6:00pm. The attached ordinance amends KMC 2.04 City Council to reflect the new meeting time and removes several sections that contain redundant and obsolete language, as well as procedures that are already addressed within the Council Rules of Procedure.

RECOMMENDED ACTION:

Move to approve the Ordinance amending KMC 2.04 City Council on first reading.

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF KELSO AMENDING KELSO
MUNICIPAL CODE 2.04 CITY COUNCIL TO AMEND THE MEETING TIME
FOR REGULAR MEETINGS AND TO REMOVE CERTAIN COUNCIL
PROCEDURES**

WHEREAS, the City Council wishes to amend the commencement time for its regular meetings from 7 pm to 6 pm for the convenience and efficiency of those attending; and

WHEREAS, the City Council wishes to remove certain procedural provisions within the municipal code that are addressed elsewhere by the adoption and regular amendment of the Council rules and by doing so eliminate duplication and inefficiency;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF KELSO DO ORDAIN AS FOLLOWS:

SECTION 1. That Kelso Municipal Code 2.04 is hereby amended as set forth in Exhibit A, attached hereto and hereby incorporated:

SECTION 2. SEVERABILITY. The provisions of this Ordinance are declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect 5 days after its passage and publication of summary as required by law.

ADOPTED by the City Council and **SIGNED** by the Mayor this ____ day of _____, 2013.

ATTEST/AUTHENTICATION:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

PUBLISHED: _____

Exhibit A

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Chapter 2.04 CITY COUNCIL*

Sections:

[2.04.010](#) Election of councilmembers—Terms.

[2.04.020](#) Eligibility requirements.

[2.04.030](#) Compensation.

[2.04.040](#) Meetings.

*Prior history: Ords. 2966 and 2971. Prior code Ch. 1.08.

Deleted: [2.04.050](#) Order of business.¶
[2.04.060](#) Rules of procedure.¶
[2.04.070](#) Council seating order.¶
[2.04.080](#) Presiding officers.¶

2.04.010 Election of councilmembers—Terms.

A. In the election of city councilmembers, all seven shall be elected at large for four-year terms subject to the provisions of Kelso City Charter Section 2.01.

B. The four-year terms shall commence and terminate as provided in RCW 29.04.170.

C. The city council shall have the powers and authority granted to it in the Kelso City Charter. (Ord. 3279 § 2(g)–(i), 1995)

2.04.020 Eligibility requirements.

No person shall be eligible to hold elective office under the Kelso City Charter plan of government unless he shall have been a resident of the city for a period of at least one year next preceding his election, and a registered voter. Councilmembers are prohibited from holding other public office or employment as provided in Kelso City Charter Section 2.05(a). (Ord. 3279 § 2(j), 1995)

2.04.030 Compensation.*

A. Subject to Kelso City Charter Section 2.04, members of the city council shall be compensated at a rate of four thousand eight hundred dollars per year payable in twelve equal monthly installments.

B. In addition to the compensation provided for in subsection A of this section, the mayor shall be paid an annual salary of four thousand eight hundred dollars payable in twelve equal monthly installments.

C. The compensation herein provided shall apply to all members of the council to which it may constitutionally and legally be applied and shall be expanded to include ineligible members as they become eligible. (Ord. 3660 § 1, 2007; Ord. 3584 § 1, 2005; Ord. 3489 § 1, 2001; Ord. 3279 § 2(k)–(m), 1995)

*Code reviser's note: Ordinance 3660, which increased city councilmember compensation from three thousand six hundred dollars to four thousand eight hundred dollars, shall be in full force and effect on

January 1, 2008, for positions four, five, six, and seven of the city council and on January 1, 2010, for positions one, two and three of the city council.

2.04.040 Meetings.

A. The city council shall hold regular meetings on the first Tuesday and third Tuesday of each month, which meetings shall commence at the hour of 6:00 p.m. In cases where said regular meeting date falls on a holiday, the meeting shall be held on the next business day.

B. All meetings of the city council shall be held in the council chambers in City Hall or at such other place as the council may direct. (Ord. 3312 § 1, 1996; Ord. 3279 § 2(a)-(c), 1995)

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Deleted: 2.04.050 Order of business.¶

Pursuant to Kelso City Charter Section 2.09(b), the following matters shall be within the order of business of the council.¶

A. Call to order,¶

B. Roll call,¶

C. Reading and approval of minutes of previous meetings,¶

D. Public hearings on petitions, applications, complaints, appeals and related matters,¶

E. Citizens' business,¶

F. Consent agenda, including auditing of accounts,¶

G. Ordinances, resolutions, orders and related business,¶

H. Consideration of bids, LID's or related matters,¶

I. Reports of city officers,¶

J. Reports of city council committees or councilmembers,¶

K. Other business,¶

L. Adjournment. (Ord. 3279 § 2(d), 1995)¶

2.04.060 Rules of procedure.¶

Rules of procedure are as follows:¶

A. Robert's Rules of Order, as revised, shall govern the deliberations of the council, except when in conflict with any rule established by the council.¶

B. No member shall speak more than twice on the same subject without permission of the presiding officer; provided, however, that if this rule of procedure is waived by the presiding officer as to one member it shall be deemed as waived as to all members.¶

C. No person, not a member of the council, shall speak more than twice on the same subject without permission of the presiding officer; provided, however, that if this rule of procedure is waived as to one person, it shall be deemed as waived to all persons.¶

D. Motions shall be reduced in writing when required by the presiding officer.¶

E. Motions to reconsider must be made by a member who voted with the majority, and at the same or next succeeding meeting of the city council.¶

F. All questions of procedure shall be decided by the presiding officer with the advice of the city attorney subject to the right of appeal to the full council by any member.¶

G. A motion for adjournment shall always be in order.¶

H. The rules of the city council may be altered, amended or temporarily suspended by a vote of two-thirds of the members present. (Ord. 3279 § 2(f), 1995) [1]

2.04.050 Order of business.

Pursuant to Kelso City Charter Section 2.09(b), the following matters shall be within the order of business of the council:

- A. Call to order;
- B. Roll call;
- C. Reading and approval of minutes of previous meetings;
- D. Public hearings on petitions, applications, complaints, appeals and related matters;
- E. Citizens' business;
- F. Consent agenda, including auditing of accounts;
- G. Ordinances, resolutions, orders and related business;
- H. Consideration of bids, LID's or related matters;
- I. Reports of city officers;
- J. Reports of city council committees or councilmembers;
- K. Other business;
- L. Adjournment. (Ord. 3279 § 2(d), 1995)

2.04.060 Rules of procedure.

Rules of procedure are as follows:

- A. Robert's Rules of Order, as revised, shall govern the deliberations of the council, except when in conflict with any rule established by the council.
- B. No member shall speak more than twice on the same subject without permission of the presiding officer; provided, however, that if this rule of procedure is waived by the presiding officer as to one member it shall be deemed as waived as to all members.
- C. No person, not a member of the council, shall speak more than twice on the same subject without permission of the presiding officer; provided, however, that if this rule of procedure is waived as to one person, it shall be deemed as waived to all persons.
- D. Motions shall be reduced in writing when required by the presiding officer.
- E. Motions to reconsider must be made by a member who voted with the majority, and at the same or next succeeding meeting of the city council.
- F. All questions of procedure shall be decided by the presiding officer with the advice of the city attorney subject to the right of appeal to the full council by any member.
- G. A motion for adjournment shall always be in order.
- H. The rules of the city council may be altered, amended or temporarily suspended by a vote of two-thirds of the members present. (Ord. 3279 § 2(f), 1995)

2.04.070 Council seating order.

The seating order for council and the voting order shall be rotated quarterly by the city clerk. The presiding officer's vote shall always be called last. (Ord. 3279 § 2(e), 1995)

2.04.080 Presiding officers.

- A. The provision for a presiding officer of the council shall be in accordance with Kelso City Charter Section 2.03. In addition to the powers conferred upon the presiding officers they shall continue to have all the rights, privileges, and immunities of a member of the council. If both the

mayor and the deputy mayor are absent, meetings of the council may be presided over by a member of the council selected by a majority of the councilmembers at such meeting.

B. Specific Duties Enumerated. It shall be the duty of the presiding officer of the council to:

1. Call the meeting to order;
2. Keep the meeting to the order of business;
3. State each motion and require a second to that motion before permitting discussion;
4. Handle discussion in an orderly way:
 - a. Give every councilmember who wishes an opportunity to speak,
 - b. Permit audience participation at appropriate times,
 - c. Keep all speakers to the rule and to the question,
 - d. Give opponents and proponents alternating opportunities to speak;
5. Put a motion to a vote and count the outcome;
6. Suggest but do not make motions for adjournment. (Ord. 3279 § 2(n), (p), 1995)

AGENDA SUMMARY SHEET

Business of the City of Kelso City of Kelso, Washington

SUBJECT TITLE:

AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA LS NETWORKS, DBA "LSN" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE RIGHTS OF WAY OF THE CITY OF KELSO WASHINGTON

Agenda Item: _____

Dept. of Origin: City Attorney

For Agenda of: February 5, 2013

Cost of Item: _____

PRESENTED BY:

Janean Parker, City Attorney

City Manager: Steve Taylor

AGENDA ITEM ATTACHMENTS:

Proposed ordinance

SUMMARY STATEMENT:

LS Networks, a telecommunications company based in Oregon, has requested a franchise ordinance with the City to use the rights of way for its telecommunications system. Under the state telecommunications law, telecommunications companies may not be denied use of the right of way unless substantial evidence supports the decision. The City has granted similar franchises to other similarly situated companies. As currently drafted, and consistent with other similar agreements, the City has proposed clarifying the definition of the services provided and a reopener clause in the event franchise fees are allowed by law, or services provided extend to cable or other services where franchise fees are allowed, and also a provision to allow the City to acquire fiber or services for public use at incremental cost. In addition, the agreement has been revised to address comments received at the first reading.

FINANCIAL SUMMARY:

The franchisee will be subject to the City's 6% utility tax.

OPTIONS:

Approve the ordinance second reading.

Do not approve the ordinance and direct staff to continue to negotiate on any requested changes.

Deny the Franchise—or in effect deny their application. The City may deny an application for a master permit to a telecommunications company (here, the grant of a Franchise) only upon substantial evidence that it is not in the public interest.

RECOMMENDED ACTION:

Move to approve the ordinance on second reading to grant the Franchise.

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA LS NETWORKS, DBA "LSN" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS SYSTEM OR FACILITIES WITHIN THE RIGHTS OF WAY OF THE CITY OF KELSO WASHINGTON

WHEREAS, LightSpeed Networks, Inc. dba LS Networks dba LSN, an Oregon Corporation ("LSN") provides Telecommunications services within the City of Kelso, Washington; and

WHEREAS, Franchisee, LSN, has applied for a Telecommunications Franchise pursuant to local ordinances relating to Telecommunications located in the public rights of way, and the City of Kelso ("City") has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions stated herein:

NOW THEREFORE, THE CITY OF KELSO ORDAINS AS FOLLOWS:

Section 1: Definitions.

1.1 CITY: the Franchisor, City of Kelso, Washington, its successors and assigns.

1.2 Franchise: the grant of rights, privileges, and authority embodied in this Ordinance.

1.3 Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense in the City of KELSO and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

1.4 LSN or FRANCHISEE: the Grantee, LightSpeed Networks, Inc. dba LS Networks dba LSN, an Oregon Corporation, its successors and assigns.

1.5 Rights-of-Way: the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including Rights-of-Way held in fee, or by virtue of an easement or dedication.

1.6 Telecommunications System or Facilities: Franchisee's infrastructure within the City's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, designed or constructed for the purpose of providing Telecommunications Service, whether the same be located overhead or underground; except that such infrastructure shall not include any cellular towers unless authorized by separate written agreement. A general description of the Telecommunications Facilities currently planned by the Franchisee is set forth in Exhibit A, attached hereto and incorporated by this reference,

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1.7 Telecommunications Service: any telecommunication services provided by the Franchisee over its Telecommunication Facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Services, including but not limited to, transmission of voice, data, or other electronic information, facsimile reproduction, or other subsequently developed technology which carries an electronic signal over fiber optic cable, including but not limited to those definitions of telecommunications services as those terms are defined in RCW 35.99; provided that these terms shall not mean, refer to, or include "cable services" open video services, or video programming services as those terms are defined in the Cable Communications Act of

1984, as amended, or over-the-air broadcasts to the public at large from facilities licensed by the FCC or any successor thereto, or any services that Franchisee may not by law provide.

Section 2: Grant of Franchise. Pursuant to the laws of the State of Washington, the City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive Franchise to erect, construct, operate, repair and maintain in, under, upon, along, across and over the City's Rights-of-Way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining its Telecommunications Facilities for Telecommunications Services within the City, provided that such placement complies with all city requirements. This Franchise is granted upon the express condition that LSN, within thirty (30) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise.

Section 4: Term and Termination.

4.1 The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance and subsequent acceptance of such ordinance and Franchise by LSN.

4.2 This Franchise may be renewed for an additional ten (10) year term pursuant to the following process: If LSN desires to renew, LSN shall notify the City not less than 180 days prior to the expiration of the Franchise of its desire to renew and its desire, if any, to amend the ordinance or renegotiate any of the terms set forth within this Franchise. The City shall respond to the request not later than 120 days prior to the expiration date and may request amendment of the ordinance or renegotiation of any term. If LSN requests renewal and either party requests amendment of the ordinance or renegotiation of any term, this Franchise shall not renew unless the City and LSN reach agreement and said agreement is approved by ordinance of the City Council. The City will not unreasonably withhold renewal of the additional periods. Nothing in this section prevents the parties from reaching agreement or renewal earlier than the time periods indicated.

4.3 Upon termination or expiration of the Franchise, Franchisee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Franchisee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove the facilities and charge LSN for the costs of removal.

Section 5: No Limitation of City Authority.

5.1 Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

5.2 In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

5.3 Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

5.4 Except as otherwise provided by law, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required

as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Franchisee—Scope of Obligations The obligations imposed upon LSN by the express terms of this Ordinance, or implied by the terms of this section or any other ordinance affecting the same, shall be deemed to include every employee, nominee or independent contractor of LSN performing work in the City Rights-of Way under contract, direction, request, or authority of LSN under this Franchise, and LSN, its agents, employees, or independent contractors, severally, shall be responsible to the City for any injury or damage to City property or the expense incurred or suffered by the City in correcting defects in work replacing City streets or other improvements damaged by the acts, or neglect of such agents, employees, or independent contractors of LSN.

Section 7: Construction, Maintenance and Repair of Infrastructure.

7.1 Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans (1) to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City, and (2) maintained by the City and protected from disclosure to third parties to the maximum extent allowed by Washington law. Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

7.2 LSN's Telecommunication Facilities shall be constructed, installed, maintained and repaired within City Rights-of Way as per applicable City standards and code so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington and the ordinance, rules, and regulations of the City and the terms of this Franchise. LSN shall exercise its rights within the City Rights-of-Way in accordance with applicable City codes and ordinances governing use and occupancy of the City Rights-of-Way.

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7.3 LSN shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, cables, equipment and connections in, over, under and upon the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. If a violation any applicable regulation is found to exist, the City may, upon discussion with LSN, establish a reasonable time for LSN to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable and applicable costs thereof from LSN. LSN shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City Rights-of-Way.

7.4 In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

7.5 Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities as per city Standards.

7.6 Whenever the Public Utility District No. 1 of Cowlitz County, Washington, ("District") permanently discontinues any of the above ground or at grade District-owned Facilities within the City Right of Way, such as poles, braces, guys, and anchors, due to modifications or upgrades to District's Facilities within the City Right of Way, the relocation or removal of LSN's Facilities connected to District Facilities shall be the responsibility of LSN. The relocation or removal of such facilities shall occur within ninety (90) calendar days after LSN's receipt of notice from the City demanding relocation or removal. The City will expeditiously review any LSN requests to move its Facilities. Further, when the District changes its method of transmission, such as changing from overhead transmission to underground transmission, LSN shall, within a reasonable period, remove or relocate its facilities as provided in this Section.

7.7 The City may, at the time of LSN's construction, relocation or placement of duct or conduits in the Right of Way, require that LSN provide the City with additional duct or conduit or related structures at incremental cost, necessary to access the conduit; provided that as a conditions to such a requirement, the City must enter into a separate contract with LSN pursuant to the terms and conditions set forth in RCW 35.99.070.

Section 8: Insurance.

8.1 General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

8.2 Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

8.3 Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

8.4 Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each person, and \$1,000,000, for each occurrence of bodily injury and \$1,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

Section 9: Transfers and Change in Control.

9.1 Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

9.2 Any transfer of ownership affected without the written consent of the City shall render this Franchise subject to revocation. Consent shall not be unreasonably withheld.

9.3 The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

9.4 The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

9.5 The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

9.6 Franchisee may offer or provide capacity or bandwidth in its Telecommunications System to another person without prior written notice to the City; provided that, Franchisee shall at all times retain exclusive control over its Telecommunication System and shall remain solely responsible for constructing, maintaining, and repairing its Telecommunication System pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such person that are greater than any rights Franchisee has pursuant to this Franchise; any rights granted shall terminate upon expiration or termination of this Franchise; such persons shall not be construed to be third-Party beneficiaries hereunder; such persons shall not be authorized herein to place, locate, construct, install, maintain, repair or operate equipment, systems or facilities in the Public Right-of-Way belonging to or controlled by such person, without prior authorization of the City; and, no such person may use the Telecommunication System to provide "cable services", open video services, or video programming services as those terms are defined in the Cable Communications Act of 1984, as amended, except as may be authorized by the City.

Section 10: Indemnification.

10.1 LSN shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions of LSN its agents, servants, officers, or employees in performing under this Franchise. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of LSN, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in the City Rights-of-Way or in any other public place in performance of work or services permitted under this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.

10.2 In the event any claim or demand for which indemnification is provided under Section 10.1 is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify LSN thereof, and LSN may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event that LSN refuses the tender of defense in any suit or any claim for which indemnification is provided under Section 10.1, said tender having been made pursuant to this indemnification clause, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of LSN, then LSN shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable recovery of attorneys' fees under this indemnification clause.

10.3 In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of LSN and the City, its officers, employees and agents, LSN's liability hereunder shall be only to the extent of LSN's negligence or the negligence of its agents. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, LSN waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude LSN from raising such immunity as a defense against any claim brought against LSN by any of its employees. This waiver has been mutually negotiated by the parties.

10.4 In the event it is determined that RCW 4.24.115 applies to this Franchise, LSN's indemnification obligations under Section 10.1 shall apply to the maximum extent permitted thereunder, to the full extent of LSN's negligence. Furthermore, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

10.5 The provisions in this Section 10 shall survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for which indemnification is provided under Section 10.1 and which is based on an act or omission that occurred during the term of this Franchise.

Section 11: Compensation.

11.1 Utility Tax. The Franchise shall pay to City during the term of this Franchise an amount equal to six percent (6%) of the Franchisee's Gross Revenues ("Utility Tax"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point and multi-point services is based on the pro-rata share of the revenue from those services.

11.2 Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Utility Tax below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

11.3 Payment of Utility Tax. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

11.4 Franchisee may not offset against the Utility Tax the amount of any fee or charge paid to the City in connection with the Franchisee's use of the Rights-of-Way whether or not the fee or charge is imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

11.5 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge upon revenues derived by LSN from the telephone business, as defined in RCW 82.16.010 for use of the right of way. However, the City reserves the right to impose a franchise fee upon such revenues in the event that a change in state law or a final binding non-appealable decision of the appellate courts allows the imposition of franchise fees upon such revenues. The City further reserves its right to impose a franchise fee upon gross revenues derived by Franchisee from within the City from its Telecommunications System that are not otherwise prohibited pursuant to RCW 35.21.860 or other applicable state or federal law. In the event the City elects to

impose a franchise fee upon revenues derived by the Franchisee from its Telecommunications System within the City, the City will provide written notice of the same to Franchisee. The Franchisee agrees that, upon such notice, the City and Franchisee shall enter into good faith negotiations to amend this Franchise so as to enable the City to assess and collect such franchise fees in a manner reasonable acceptable to the City and Franchisee. In the event that Franchisee disputes the City's authority to impose such franchise fees and/or the Franchisee and City are unable to mutually agree on the terms and conditions of such amendment to the Franchise, either party may submit the dispute to the dispute resolution and binding arbitration provisions as set forth in Section 16.3; provided however, that nothing herein shall prevent the parties from first submitting the dispute to mediation.

11.6 As provided in RCW 35.21.860, the City may recover from LSN actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, or this Franchise. In consideration of such administrative expenses, the City shall charge LSN a permit fee which shall specify the amounts due. LSN shall make payment to the City of such expenses prior to permit issuance. Failure of LSN to acquire permit and pay such amount shall constitute a failure to comply with this Franchise. Additionally, failure to timely pay said amounts shall be grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Franchisee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Washington law.

Section 14: Right to Perform Utility Tax Audit or Review; Default. In addition to all rights granted under Section 13, and as further set forth in Kelso Municipal Code 5.02, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Utility Taxes to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 5 years after the date on which Franchise fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16 Dispute Resolution and Amendment of Franchise.

16.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify LSN in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) days of its receipt of such notice, LSN shall provide written response to the City that shall acknowledge receipt of such notice and state LSN's intentions with respect to how LSN shall respond to such notice. LSN shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

- A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 15.2, or;
- B. Resolve the dispute or cure the default, or;
- C. Notify the City that LSN cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default.

Notwithstanding such notice, LSN shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by LSN and the projected completion date. In such case, the City may set a meeting in accordance with Section 16.2.

16.2 If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with Section 15.1., then the City shall promptly schedule a meeting between the City and LSN to discuss the dispute or any alleged default. The City shall notify LSN of the meeting in writing and such meeting shall take place not less than ten (10) days after LSN's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting, shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means, except that any dispute or inability to agree on terms and conditions for amendment of the Franchise, including Franchise fees, that arise under Section 11(e) shall instead be subject to the binding arbitration provisions of 16.3. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

16.3 Notwithstanding the provisions of 16.4, for any dispute or inability to agree on terms and conditions for any amendment of the Franchise, including Franchise fees, that arise under Section 11(e), the Parties agree that in the event the dispute cannot be resolved pursuant to Section 16.1 or 16.2 of this Franchise, either party may submit the dispute to binding arbitration as provided pursuant to this section 16.3, by providing written notice to the other party of such intent; provided however, nothing herein shall prevent the parties from first submitting the dispute to mediation. Within fifteen (15) days after notice of submission of the dispute to binding arbitration, the Parties shall agree upon a single arbitrator selected from a panel of persons qualified by the American Arbitration Association [or other agreed upon local alternative dispute resolution organization] or, in case of a disagreement, the arbitrator shall be appointed from such panel by the presiding judge of [applicable local court]. During such time that the arbitrator is being selected or appointed, the Parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner. The arbitrator shall apply applicable provisions of Washington law in reaching his or her determination. In resolving disputes regarding the terms and conditions of imposition of the franchise fee, including by way of example and not limitation, the amount of the franchise fee to be assessed, the arbitrator shall determine whether the terms and conditions proposed by the City are just and reasonable and within the scope of the City's authority. The determination by the arbitrator shall be final and binding on the Parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Franchisee and City shall use their best efforts to conclude all arbitration proceedings involving franchise fee disputes within thirty (30) days following the commencement of such arbitration proceedings. The arbitrator shall have no authority to award attorneys' fees, or any other costs or expenses

incurred directly or indirectly in connection with the proceedings provided, however, the costs of the arbitrator shall be shared equally by the Parties.

16.4 If, at the conclusion of the steps provided for in Section 16.1 and 16.2 above, the City and LSN are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or LSN (as LSN may have authority to do so) may:

- A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and/or;
- B. By ordinance, declare an immediate forfeiture of this Franchise for a breach of any material obligations under this Franchise and/or;
- C. Take such other action to which it is entitled under this Franchise or any applicable law.

16.5 Unless otherwise agreed by the City and LSN in writing, the City and LSN shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

16.6 Neither LSN's acceptance of this Franchise, LSN's appearance before the City Council at any public proceeding concerning the proposed termination of this Franchise, nor any action taken by the City Council as a result of any such public proceeding, including a declaration of termination or a finding of grounds to terminate, shall be construed to waive or otherwise affect LSN's right to seek dispute resolution of the rights and responsibilities of the parties under this Franchise.

16.7 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement, or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by LSN of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically references this Franchise and states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

16.8 In the event a dispute arises regarding the interpretation, implementation and/or breach of the terms of this Franchise, the prevailing party is entitled to be awarded costs and reasonable attorney fees incurred in resolution of such dispute pursuant to the terms of this section and in any judicial proceeding.

Section 17: Venue.

Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Superior Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court for the Western District of Washington in Seattle, Washington.

Section 18: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 19: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Washington anti-trust law, RCW 19.86.010 – 19.86.120. Nothing contained in this

section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 20: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

Department: Public Works
Name: Public Works Director
Address: P.O. Box 819
203 South Pacific, Suite 217_
KELSO, WA 98626
Phone: 360-423-6590
Facsimile: 360-423-6591

Contracts Administration
LS Networks
921 SW Washington St., STE 370
Portland, OR 97205
Phone: (503) 294-5300
Facsimile: (503) 227-8585

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 21: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 22: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. .

PASSED by the City Council and approved by the Mayor _____, 2013.

Deleted: 2012

APPROVED: _____

Mayor

Attest: _____

City Recorder

Approved as to form

City Attorney

Accepted _____ (date)

LightSpeed Networks, Inc.

By _____
Michael Weidman
Title President and CEO

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA LS NETWORKS, DBA "LSN" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS SYSTEM OR FACILITIES WITHIN THE RIGHTS OF WAY OF THE CITY OF KELSO WASHINGTON

WHEREAS, LightSpeed Networks, Inc. dba LS Networks dba LSN, an Oregon Corporation ("LSN") provides Telecommunications services within the City of Kelso, Washington; and

WHEREAS, Franchisee, LSN, has applied for a Telecommunications Franchise pursuant to local ordinances relating to Telecommunications located in the public rights of way, and the City of Kelso ("City") has reviewed said application and has determined that it meets the requirements of the City's Ordinance subject to the terms and conditions stated herein:

NOW THEREFORE, THE CITY OF KELSO ORDAINS AS FOLLOWS:

Section 1: Definitions.

1.1 CITY: the Franchisor, City of Kelso, Washington, its successors and assigns.

1.2 Franchise: the grant of rights, privileges, and authority embodied in this Ordinance.

1.3 Gross Revenues: Any and all revenue, of any kind, nature, or form, without deduction for expense in the City of KELSO and is further defined in Section 11. All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from internet access services while prohibited by law.

1.4 LSN or FRANCHISEE: the Grantee, LightSpeed Networks, Inc. dba LS Networks dba LSN, an Oregon Corporation, its successors and assigns.

1.5 Rights-of-Way: the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including Rights-of-Way held in fee, or by virtue of an easement or dedication.

1.6 Telecommunications System or Facilities: Franchisee's infrastructure within the City's Rights-of-Way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, designed or constructed for the purpose of providing Telecommunications Service, whether the same be located overhead or underground; except that such infrastructure shall not include any cellular towers unless authorized by separate written agreement. A general description of the Telecommunications Facilities currently planned by the Franchisee is set forth in Exhibit A attached hereto and incorporated by this reference.

1.7 Telecommunications Service: any telecommunication services provided by the Franchisee over its Telecommunication Facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Services, including but not limited to, transmission of voice, data, or other electronic information, facsimile reproduction, or other subsequently developed technology which carries an electronic signal over fiber optic cable, including but not limited to those definitions of telecommunications services as those terms are defined in RCW 35.99; provided that these terms shall not mean, refer to, or include "cable services" open video services, or video programming services as those terms are defined in the Cable Communications Act of

1984, as amended, or over-the-air broadcasts to the public at large from facilities licensed by the FCC or any successor thereto, or any services that Franchisee may not by law provide.

Section 2: Grant of Franchise. Pursuant to the laws of the State of Washington, the City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive Franchise to erect, construct, operate, repair and maintain in, under, upon, along, across and over the City's Rights-of-Way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining its Telecommunications Facilities for Telecommunications Services within the City, provided that such placement complies with all city requirements. This Franchise is granted upon the express condition that LSN, within thirty (30) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-Way, by Franchise, permit or otherwise.

Section 4: Term and Termination.

4.1 The term of this Franchise shall be ten (10) years, commencing with the effective date of this Ordinance and subsequent acceptance of such ordinance and Franchise by LSN.

4.2 This Franchise may be renewed for an additional ten (10) year term pursuant to the following process: If LSN desires to renew, LSN shall notify the City not less than 180 days prior to the expiration of the Franchise of its desire to renew and its desire, if any, to amend the ordinance or renegotiate any of the terms set forth within this Franchise. The City shall respond to the request not later than 120 days prior to the expiration date and may request amendment of the ordinance or renegotiation of any term. If LSN requests renewal and either party requests amendment of the ordinance or renegotiation of any term, this Franchise shall not renew unless the City and LSN reach agreement and said agreement is approved by ordinance of the City Council. The City will not unreasonably withhold renewal of the additional periods. Nothing in this section prevents the parties from reaching agreement or renewal earlier than the time periods indicated.

4.3 Upon termination or expiration of the Franchise, Franchisee shall, within one hundred and eighty days (180), remove all its facilities from the City's Rights-of-Way. Should the Franchisee fail to remove its facilities within the one hundred and eighty day period (180), the City may remove the facilities and charge LSN for the costs of removal.

Section 5: No Limitation of City Authority.

5.1 Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its Rights-of-Way, or granting other franchises for use of Rights-of-Way, or of adopting general ordinances regulating use of or activities in the Rights-of-Way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its Rights-of-Way, whether now owned or hereinafter acquired.

5.2 In the event that any portion of the Franchisee's infrastructure interferes with any present or future use the City desires to make of its Rights-of-Way, Franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.

5.3 Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five (5) years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.

5.4 Except as otherwise provided by law, nothing in this Franchise shall be construed to give the Franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon Franchisee's taxable real or personal property, or against any permit fees or inspection fees required

as a condition of construction of any improvements upon Franchisee's real property and imposed under a generally applicable ordinance or resolution.

Section 6: Franchisee—Scope of Obligations The obligations imposed upon LSN by the express terms of this Ordinance, or implied by the terms of this section or any other ordinance affecting the same, shall be deemed to include every employee, nominee or independent contractor of LSN performing work in the City Rights-of Way under contract, direction, request, or authority of LSN under this Franchise, and LSN, its agents, employees, or independent contractors, severally, shall be responsible to the City for any injury or damage to City property or the expense incurred or suffered by the City in correcting defects in work replacing City streets or other improvements damaged by the acts, or neglect of such agents, employees, or independent contractors of LSN.

Section 7: Construction, Maintenance and Repair of Infrastructure.

7.1 Franchisee may make all needful excavations in any Right-of-Way for the purpose of placing, erecting, laying, maintaining or repairing Franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans (1) to be evaluated by the standards applied to the construction of other similar Telecommunications systems in the City, and (2) maintained by the City and protected from disclosure to third parties to the maximum extent allowed by Washington law. Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this Franchise, be adopted from time to time by the City, or any other authority having jurisdiction over Rights-of-Way. Prior to commencing excavation or construction, Franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

7.2 LSN's Telecommunication Facilities shall be constructed, installed, maintained and repaired within City Rights-of Way as per applicable City standards and code so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington and the ordinance, rules, and regulations of the City and the terms of this Franchise. LSN shall exercise its rights within the City Rights-of-Way in accordance with applicable City codes and ordinances governing use and occupancy of the City Rights-of-Way.

7.3 LSN shall at all times employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public. All structures and all lines, cables, equipment and connections in, over, under and upon the Franchise Area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. If a violation any applicable regulation is found to exist, the City may, upon discussion with LSN, establish a reasonable time for LSN to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable and applicable costs thereof from LSN. LSN shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City Rights-of-Way.

7.4 In the event emergency repairs are necessary for Franchisee's facilities, Franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Department of Public Works by telephone, electronic data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

7.5 Franchisee shall construct and maintain its Telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities as per city Standards.

7.6 Whenever the Public Utility District No. 1 of Cowlitz County, Washington, ("District") permanently discontinues any of the above ground or at grade District-owned Facilities within the City Right of Way, such as poles, braces, guys, and anchors, due to modifications or upgrades to District's Facilities within the City Right of Way, the relocation or removal of LSN's Facilities connected to District Facilities shall be the responsibility of LSN. The relocation or removal of such facilities shall occur within ninety (90) calendar days after LSN's receipt of notice from the City demanding relocation or removal. The City will expeditiously review any LSN requests to move its Facilities. Further, when the District changes its method of transmission, such as changing from overhead transmission to underground transmission, LSN shall, within a reasonable period, remove or relocate its facilities as provided in this Section.

7.7 The City may, at the time of LSN's construction, relocation or placement of duct or conduits in the Right of Way, require that LSN provide the City with additional duct or conduit or related structures at incremental cost, necessary to access the conduit; provided that as a conditions to such a requirement, the City must enter into a separate contract with LSN pursuant to the terms and conditions set forth in RCW 35.99.070.

Section 8: Insurance.

8.1 General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

8.2 Evidence Required. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

8.3 Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.

8.4 Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' compensation insurance for all subject workers; and

(2) General liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each person, and \$1,000,000, for each occurrence of bodily injury and \$1,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise.

Section 9: Transfers and Change in Control.

9.1 Transfer. This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

9.2 Any transfer of ownership affected without the written consent of the City shall render this Franchise subject to revocation. Consent shall not be unreasonably withheld.

9.3 The Franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

9.4 The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. However, the Telecommunications System franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise.

9.5 The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

9.6 Franchisee may offer or provide capacity or bandwidth in its Telecommunications System to another person without prior written notice to the City; provided that, Franchisee shall at all times retain exclusive control over its Telecommunication System and shall remain solely responsible for constructing, maintaining, and repairing its Telecommunication System pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such person that are greater than any rights Franchisee has pursuant to this Franchise; any rights granted shall terminate upon expiration or termination of this Franchise; such persons shall not be construed to be third-Party beneficiaries hereunder; such persons shall not be authorized herein to place, locate, construct, install, maintain, repair or operate equipment, systems or facilities in the Public Right-of-Way belonging to or controlled by such person, without prior authorization of the City; and, no such person may use the Telecommunication System to provide "cable services", open video services, or video programming services as those terms are defined in the Cable Communications Act of 1984, as amended, except as may be authorized by the City.

Section 10: Indemnification.

10.1 LSN shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions of LSN its agents, servants, officers, or employees in performing under this Franchise. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of LSN, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in the City Rights-of-Way or in any other public place in performance of work or services permitted under this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.

10.2 In the event any claim or demand for which indemnification is provided under Section 10.1 is presented to, or suit or action is commenced against, the City based upon any such claim or demand, the City shall promptly notify LSN thereof, and LSN may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. In the event that LSN refuses the tender of defense in any suit or any claim for which indemnification is provided under Section 10.1, said tender having been made pursuant to this indemnification clause, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of LSN, then LSN shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable recovery of attorneys' fees under this indemnification clause.

10.3 In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of LSN and the City, its officers, employees and agents, LSN's liability hereunder shall be only to the extent of LSN's negligence or the negligence of its agents. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, LSN waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude LSN from raising such immunity as a defense against any claim brought against LSN by any of its employees. This waiver has been mutually negotiated by the parties.

10.4 In the event it is determined that RCW 4.24.115 applies to this Franchise, LSN's indemnification obligations under Section 10.1 shall apply to the maximum extent permitted thereunder, to the full extent of LSN's negligence. Furthermore, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is in the City's best interest.

10.5 The provisions in this Section 10 shall survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for which indemnification is provided under Section 10.1 and which is based on an act or omission that occurred during the term of this Franchise.

Section 11: Compensation.

11.1 Utility Tax. The Franchise shall pay to City during the term of this Franchise an amount equal to six percent (6%) of the Franchisee's Gross Revenues ("Utility Tax"). Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected. Revenue from point to point and multi-point services is based on the pro-rata share of the revenue from those services.

11.2 Modification Resulting from Action by Law. Upon thirty days notice and in the event any law or valid rule or regulation applicable to this Franchise limits the Utility Tax below the amount provided herein, or as subsequently modified, the Franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then Franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

11.3 Payment of Utility Tax. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31, June 30, September 30, and December 31, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of gross revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

11.4 Franchisee may not offset against the Utility Tax the amount of any fee or charge paid to the City in connection with the Franchisee's use of the Rights-of-Way whether or not the fee or charge is imposed under a generally applicable ordinance or resolution. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Franchisee.

11.5 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge upon revenues derived by LSN from the telephone business, as defined in RCW 82.16.010 for use of the right of way. However, the City reserves the right to impose a franchise fee upon such revenues in the event that a change in state law or a final binding non-appealable decision of the appellate courts allows the imposition of franchise fees upon such revenues. The City further reserves its right to impose a franchise fee upon gross revenues derived by Franchisee from within the City from its Telecommunications System that are not otherwise prohibited pursuant to RCW 35.21.860 or other applicable state or federal law. In the event the City elects to

impose a franchise fee upon revenues derived by the Franchisee from its Telecommunications System within the City, the City will provide written notice of the same to Franchisee. The Franchisee agrees that, upon such notice, the City and Franchisee shall enter into good faith negotiations to amend this Franchise so as to enable the City to assess and collect such franchise fees in a manner reasonable acceptable to the City and Franchisee. In the event that Franchisee disputes the City's authority to impose such franchise fees and/or the Franchisee and City are unable to mutually agree on the terms and conditions of such amendment to the Franchise, either party may submit the dispute to the dispute resolution and binding arbitration provisions as set forth in Section 16.3; provided however, that nothing herein shall prevent the parties from first submitting the dispute to mediation.

11.6 As provided in RCW 35.21.860, the City may recover from LSN actual administrative expenses incurred by the City that are directly related to receiving and approving a permit, license, or this Franchise. In consideration of such administrative expenses, the City shall charge LSN a permit fee which shall specify the amounts due. LSN shall make payment to the City of such expenses prior to permit issuance. Failure of LSN to acquire permit and pay such amount shall constitute a failure to comply with this Franchise. Additionally, failure to timely pay said amounts shall be grounds for the City to preclude the processing of any applications and/or issuing permits until payment has been fully made.

Section 12: Extension of City Limits. Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All Facilities owned, maintained, or operated by Franchisee located within any public Rights-of-Ways of the annexed territory shall be subject to all of the terms of this Ordinance.

Section 13: Right to Inspect Records. In order to manage the Franchisee's use of Rights-of-Way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the Franchisee's Telecommunications System; the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its Rights-of-Way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Washington law.

Section 14: Right to Perform Utility Tax Audit or Review; Default. In addition to all rights granted under Section 13, and as further set forth in Kelso Municipal Code 5.02, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Receipts of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Utility Taxes to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than 5 years after the date on which Franchise fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights.

Section 15: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's Rights-of-Way.

Section 16 Dispute Resolution and Amendment of Franchise.

16.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify LSN in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) days of its receipt of such notice, LSN shall provide written response to the City that shall acknowledge receipt of such notice and state LSN's intentions with respect to how LSN shall respond to such notice. LSN shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

- A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 15.2, or;
- B. Resolve the dispute or cure the default, or;
- C. Notify the City that LSN cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default.

Notwithstanding such notice, LSN shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by LSN and the projected completion date. In such case, the City may set a meeting in accordance with Section 16.2.

16.2 If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with Section 15.1., then the City shall promptly schedule a meeting between the City and LSN to discuss the dispute or any alleged default. The City shall notify LSN of the meeting in writing and such meeting shall take place not less than ten (10) days after LSN's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting, shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means, except that any dispute or inability to agree on terms and conditions for amendment of the Franchise, including Franchise fees, that arise under Section 11(e) shall instead be subject to the binding arbitration provisions of 16.3. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

16.3 Notwithstanding the provisions of 16.4, for any dispute or inability to agree on terms and conditions for any amendment of the Franchise, including Franchise fees, that arise under Section 11(e), the Parties agree that in the event the dispute cannot be resolved pursuant to Section 16.1 or 16.2 of this Franchise, either party may submit the dispute to binding arbitration as provided pursuant to this section 16.3, by providing written notice to the other party of such intent; provided however, nothing herein shall prevent the parties from first submitting the dispute to mediation. Within fifteen (15) days after notice of submission of the dispute to binding arbitration, the Parties shall agree upon a single arbitrator selected from a panel of persons qualified by the American Arbitration Association [or other agreed upon local alternative dispute resolution organization] or, in case of a disagreement, the arbitrator shall be appointed from such panel by the presiding judge of [applicable local court]. During such time that the arbitrator is being selected or appointed, the Parties shall continue to negotiate in good faith to resolve their dispute in a cooperative manner. The arbitrator shall apply applicable provisions of Washington law in reaching his or her determination. In resolving disputes regarding the terms and conditions of imposition of the franchise fee, including by way of example and not limitation, the amount of the franchise fee to be assessed, the arbitrator shall determine whether the terms and conditions proposed by the City are just and reasonable and within the scope of the City's authority. The determination by the arbitrator shall be final and binding on the Parties, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Franchisee and City shall use their best efforts to conclude all arbitration proceedings involving franchise fee disputes within thirty (30) days following the commencement of such arbitration

proceedings. The arbitrator shall have no authority to award attorneys' fees, or any other costs or expenses incurred directly or indirectly in connection with the proceedings provided, however, the costs of the arbitrator shall be shared equally by the Parties.

16.4 If, at the conclusion of the steps provided for in Section 16.1 and 16.2 above, the City and LSN are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or LSN (as LSN may have authority to do so) may:

- A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and/or;
- B. By ordinance, declare an immediate forfeiture of this Franchise for a breach of any material obligations under this Franchise and/or;
- C. Take such other action to which it is entitled under this Franchise or any applicable law.

16.5 Unless otherwise agreed by the City and LSN in writing, the City and LSN shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

16.6 Neither LSN's acceptance of this Franchise, LSN's appearance before the City Council at any public proceeding concerning the proposed termination of this Franchise, nor any action taken by the City Council as a result of any such public proceeding, including a declaration of termination or a finding of grounds to terminate, shall be construed to waive or otherwise affect LSN's right to seek dispute resolution of the rights and responsibilities of the parties under this Franchise.

16.7 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement, or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by LSN of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically references this Franchise and states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

16.8 In the event a dispute arises regarding the interpretation, implementation and/or breach of the terms of this Franchise, the prevailing party is entitled to be awarded costs and reasonable attorney fees incurred in resolution of such dispute pursuant to the terms of this section and in any judicial proceeding.

Section 17: Venue. Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the local Superior Court for the City; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court for the Western District of Washington in Seattle, Washington.

Section 18: Limitation of Liability. The City and the Franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 19: Compliance with Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Washington anti-trust law, RCW 19.86.010 – 19.86.120. Nothing contained in this

section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 20: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

Department: Public Works
Name: Public Works Director
Address: P.O. Box 819
203 South Pacific, Suite 217_
KELSO, WA 98626
Phone: 360-423-6590
Facsimile: 360-423-6591

Contracts Administration
LS Networks
921 SW Washington St., STE 370
Portland, OR 97205
Phone: (503) 294-5300
Facsimile: (503) 227-8585

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 21: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 22: Severability. If any part of this Franchise becomes or is held to be invalid for any reason, the determination will affect only the invalid portion of this Franchise. In all other respects this Franchise will stand and remain in full force and effect as if the invalid provision had not been part of this Franchise.

Section 22: Waiver.

(a) The City is vested with the power and authority to reasonably regulate, and manage, its Rights-of-Way in a competitively neutral and non-discriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights.

PASSED by the City Council and approved by the Mayor _____, 2012.

APPROVED: _____

Mayor

Attest: _____

City Recorder

Approved as to form

City Attorney

Accepted _____(date)

LightSpeed Networks, Inc.

By _____
Michael Weidman
Title President and CEO

Exhibit A

